

Outline of evidence for  
Schmidt's legal claims,  
by pro-bono lawyers at  
Howrey Simon

1 8 July 05

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Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
<b>Breach of Contract</b>	Defendant promised that plaintiff would be discharged only for just cause		15-Nov-96	A facsimile titled "Proposals for discussion at Physics Today retreat." The first proposal states, "[a]greement that we want to keep all the present staff members. Security is a prerequisite for speaking freely, sharing ideas and experimentation." This is the cornerstone of our claims based on a contract between Schmidt and AIP. <b>S 000440-445. S 000516-517.</b>			17-Nov-96	Email from Benka to ALL-PT. Benka notes that "nobody's job will be jeopardized by speaking freely and airing their views on matters pertinent to the magazine." He continues, that "there are no guarantees of lifetime employment at AIP for any of us." <b>D 01383.</b>		
			17-Nov-96	Email for Benka to ALL-PT re job security. Benka states that "nobody's job will be jeopardized by speaking freely and airing their views on matters pertinent to the magazine." He ends by stating that job security is based on job performance.. He also notes that there is "no guarantee of lifetime employment at AIP. <b>S 000628.</b>			15-Nov-96	Proposal for discussion at Physics Today retreat. Proposal #1 requests an agreement to keep all present staff members. This is just a proposal and nothing indicates what it exactly means or whether AIP officially adopted it or what such an adoption would mean. <b>D 00425-426.</b>		

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	The plaintiff's discharge was contrary to the terms of the contract		Jan-82	AIP Employee Handbook. The handbook outlines AIP's discipline procedures. An employee is entitled to a "Corrective Interview" which is recorded in the employees file. Following a corrective interview, if the behavior persists, that employee is subject to termination. <i>It is unclear whether Schmidt ever received a corrective interview.</i> <b>S 000583-588.</b>						
	The defendant did not promise that the plaintiff would only be terminated only for cause		22-Feb-99	Email from Schmidt to Paul Elliot re the notification of AIP's plans to purge Univ. of Md email accounts. Schmidt notes that this along with removing name plates, names from directories is AIP's way of "reminding us of our expendability." Could undermine that idea that Schmidt believed he had a contract with AIP. <b>S 000194.</b>			Undated	Page 31-32 of whatever appears to be Employee Handbook stating that "All employees of AIP are employed at-will," <b>D 00307.</b>		





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		A covenant of good faith and fair dealing is not part of the employment contract								
		The covenant does not subject the defendant to the duty allegedly violated								
		The defendant acted in good faith with regards to the employment contract								
		The plaintiff was not injured								
		The claim is preempted by federal-law								
42 U.S.C. 1981-retaliation	Plaintiff engaged in a protected activity		24-Oct-96	General Meeting Agenda. Items 2b and 2c are Staff participation in hiring and need for additional staff. Jeff is listed as someone interested in these ideas. This is a time that Jeff raised the issue of the lack of diversity. <b>S 00488-490.</b>			5-Nov-97	Letter from Schmidt to Brodsky thanking Brodsky for meeting with Schmidt to discuss alleged failures on AIP's part to live up to its Affirmative Action claim. Schmidt's letter explains where Schmidt believes AIP is deficient. <b>D 00427-428.</b>		
			29-Jan-97	Email from Benka to PT-ALL re the resumes of potential editors. The email contains the names of applicants and could be useful if Schmidt proposed or was an advocate of a known minority applicant. <b>S 000492.</b>			11-Jul-96	1996 Affirmative Action Program. The program notes that AIP had underutilized Female and minority members in the areas of Senior Management, Senior Professionals and other professionals. <b>D 00429-439.</b>		

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			21-Apr-97	Email from Benka to ALL-PT re a staff meeting to discuss the three candidates for the editor position. <i>Did Jeff raise the issue of diversity at this meeting or advocate of a minority applicant?</i> <b>S 000494.</b>			18-Nov-96	Handwritten notes for proposals for upcoming staff retreat. Schmidt is responsible for coming up with 10 proposals. Schmidt Big 10 include Affirmative Action (#8). <b>D 01428-430.</b>		
			4-Feb-97	Email from Kumagai to Schmidt re the resumes of the people to be interviewed for the editor position at PT. Jean mentions Marta Dark and Ramola Dharmaraj as good candidates. <i>Did Jeff also follow-up with Steve and push for these two people to be considered?</i> <b>S 000499-500.</b>			12-Mar-98	Interview with Schmidt conducted by Benka. Benka notes that Affirmative Action is important to PT. States that the interview process is sound and fair. Both Harris and Benka believe in Affirmative Action. <b>D 01449-452.</b>		
			30-Jan-97	Email from Schmidt to All-PT re his desire to interview all candidates for the editor position. <b>S 000519.</b>			5-Nov-97	Benka interview with Schmidt. Schmidt states that editing test is not fair to minority applicants. Schmidt states that Harris does not believe in Affirmative Action. <b>D 01453.</b>		

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			30-Jan-97	Email from Benka replying to Schmidt's request to formally interview all candidates. Benka rejects the idea that PT editors should be permitted to individually interview candidates. He permits them to provide imput and comments after they review the resumes. he states the litigious nature as one reason for not permitting the interviews. <b>S 000520&gt;</b>			24-Oct-97	Notes from phone call between Schmidt and Benka. Schmidt called Benka and voiced disappointment with interview process - PT received 85 applications and only formally interviewed white males. <b>D 01454.</b>		
			5-Nov-97	Letter from Schmidt to Brodsky re Schmidt's statement to PT advisory board committee that PT has failed to live up fully to its claim that it is an AA employer. The letter includes a short time-line documenting the history of the issue. Schmidt specifies that he believes PT's hiring process is overlooking qualified minority applicants. Lastly, he notes that Charles has treated him "a little bit like an unwelcome troublemaker" since Schmidt raised the issue. He asks Brodsky to look into the problem. <b>S 000522-523.</b>			27-Nov-96	Email from Kumagai to ACP.AIP detailing AIP's affirmative action plan. Kumagai notes that AIP has sent an ad to various minority programs. <b>D 01456.</b>		

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			1-May-01	Article in Science and Government Report discussing Schmidt's dismissal. The article notes that Schmidt believes he was fired for amongst other reasons, his continual complaints about the lack of diversity. <b>S 000792-793</b>			6-May-97	Email from Benka to ALL-PT re the process AIP went through in hiring a new editor. Benka makes a special point to note that he called certain minority members and told them that the position had been filled but that should any other position open in the future he would automatically apply them for it. He also invited the people he called to visit AIP if they are ever in the area -- he left phone number). <b>D 01459</b> .		
			11-Jul-98	Email from Feder to Schmidt, Collins, Elliot and Kumagai. Feder writes that she is upset with AIP's choice of editor and feels that the groups push for AA was not received or was ignored. <b>S 001059-060</b> .						
			Undated	Notes by Schmidt outlining his activism at PT and the reaction he received from PT/AIP management. <b>S 002091-102</b> .						

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			5-Nov-97	Letter from Schmidt to Brodsky re AIP and PT's failure to live up to its Affirmative Action stated goals. Schmidt draws a distinction between equal opportunity and affirmative action. <i>We will want to talk to Schmidt about what he views to be the difference and if he thinks there is a legal difference.</i> <b>S 002160-161.</b>						
			27-Apr-98	Memo from Schmidt to Braun and Stith challenging his 1998 Performance Review. Schmidt sought a new review after his rating was lowered from "Exceeds Job Requirements" to "Meets Job Requirements." Schmidt states that he believes the low review is a response to his organizing activity and that this lowered review is an attempt to make him stop. This review includes the change in Jeff's job description where only 70% of his workload is editing. <b>S 000524-580.</b>			25-Aug-97	Note from Benka to Schmidt explaining that his responsibilities have shifted from actual editing to more solicitation of articles. Schmidt's work is now divided by 70% editing, 25% solicitation. <b>D 00302.</b>		

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			14-Sep-99	Memo from Benka to Schmidt re his transfer from full-time to 2/3 time status. Jeff felt compelled to move to 2/3 status. <b>S 000627.</b>			26-Sep-97	Note from Benka to Schmidt re his behavior. Benka and Harris handed Schmidt a formal notice that his behavior was destructive and counterproductive. Schmidt finds this to be a "gag order." <b>D 00306 and 00308.</b>		
			26-Jun-00	Maryland Office of Unemployment Insurance Notice of Benefit Determination. Maryland's Dep't of Labor determined that Schmidt's actions did not amount to simply misconduct and he was given full benefits. <b>S 000810-812.</b>			2-Dec-97	Email from Harris and Benka to Schmidt rescinding the "gag order." <b>D 00329.</b>		
			17-Mar-03	Letter to Myriam Sarachik, President of American Physical Society from APS members seeking a "serious investigation into Schmidt's firing."			February 19. 1998	Notes from Benka following conversation with Braun. Benka notes that he needs to be specific or Schmidt will use the complaint as a reprisal for his "whistle blowing to advisory committee." <b>D 00348.</b>		

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			22-Apr-97	Handwritten note from Schmidt included on letter written by editor candidate, Nimmi Parikh to Benka. Schmidt indicates that Parikh could be a good candidate for the editor position but that he would like to interview this person or that AIP should take the time to interview this person. <b>S. 000833.</b>			20-Mar-98	Notes from Benka following conversation with Braun re Schmidt's review. States that Schmidt complained about Affirmative Action training and that Brodsky spoke with Schmidt about his disruptive behavior. <b>D 00350.</b>		
			7-Nov-97	Email from Schmidt to Brodsky re follow-up on meeting. Schmidt thanks Brodsky for discussing PT's Affirmative Action plan/issue at PT. Schmidt also suggests that AIP establish an affirmative action committee. <b>S 000839-837.</b>			27-Apr-98	Letter from Schmidt to Braun requesting that his performance review be redone. Schmidt's letter details the various reasons he feels his earlier review is unfair and punitive for his activism. <b>D 00385-403.</b>		
			4-Nov-97	Email from Kumagai to Schmidt re Schmidt's Affirmative Action letter to Brodsky. Kumagai read and edited Schmidt's proposal that he planned to send to Brodsky. The letter Schmidt planned to send to Brodsky outlines AIP's discriminatory practices. <b>S 000841-844.</b>			27-Apr-98	Copy of Letter from Schmidt to Braun requesting that his performance review be redone. This version contains notes from Benka (Benka's working copy). It refutes some of Schmidt's claims and notes that other's denied any organizing activity done by Schmidt. <b>D 00442-460.</b>		

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			7-Jun-98	Email from Schmidt to Elliot discussing a recent speech by Julian Bond re Affirmative Action. Schmidt notes that he would like to use some of the speech to quote to Stith, Brodsky, Bert, and others. <b>S 000846.</b>			19-Aug-99	Letter from schmidt to Benka re 1999 Performance Review. Schmidt writes that his 1999 review is punitive in the same fashion as his 1998 review. He questions the facts surrounding his review as well as the idea that he is the cause of the morale issue. <b>D 00501-505.</b>		
			7-Jul-98	Email from Graham Collins to Schmidt re Schmidt's Affirmative Action Complaint to Brodsky. Also asks if any of the final candidates are minorities. <b>S 000847.</b>			10-Nov-99	Email from Schmidt to Braun re vacation carryover. Schmidt had more vacation available than AIP allows one to carryover but sought an exception. Schmidt believes AIP's failure to grant his request was punitive because AIP had done so for others. <b>D 00532.</b>		
			6-Apr-00	Email from Schmidt to Nanna re vacation carryover numbers. Schmidt states that Nanna agreed that PT was wrong for not permitting Schmidt to carryover his excess vacation time. Schmidt is still seeking adjustments to his vacation time. <b>S 001188-189.</b>			11-Apr-00	Email exchange between Schmidt and Nanna re Schmidt's vacation time. Schmidt questions why Elliot is allowed to carryover time and feels he is being punished by AIP. <b>D 00546-547.</b>		

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			24-Jun-98	Memo from Stith to Schmidt re review of Schmidt 1998 Performance Review. Stith states that he did not find sufficient evidence to change Schmidt final performance rating. Schmidt believes he received a lower rating because of his activism. <b>S 001192.</b>						
			1981-199	Various Performance Evaluations of Schmidt. <b>S 001275-346.</b>						
	The employer took the adverse action because of protected activity		17-Mar-03	Letter from Micheal Lee, et al to Myriam Sarachik requesting for Schmidt to be reinstated. The letter states that Schmidt was fired for his work place activism and for writing <i>Disciplined Minds</i> . Additionally the letter states that Schmidt was fired for expressing critical ideas about the physics community in addition to the conditions at AIP/PT. Not overly helpful. <b>S 00581-582.</b>			2-Jun-00	Article in <i>The Chronicle of Higher Education</i> , noting that Schmidt was fired from AIP for writing the book, amongst other reasons. <b>D 00572.</b>		

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			3-Feb-98	Email from Elliot to Schmidt, et re office meeting between Elliot and Charles Harris. Elliot comments that Harris is aware of gag order and is considering rescinding it. Harris also stated that he viewed Schmidt as "continuing to be a troublemaker." <b>S 001037.</b>						
			3-Feb-98	Email from Kumagai to Elliot and Schmidt forwarding an email from Toni Feder. Feder's email details the time Benka interrupted Schmidt and Feder's conversation and indicated that he is entitled to be a part of any conversation between co-workers. <b>S. 001039-1041.</b>						
			16-Jul-98	Email from Schmidt to Goodwin. Schmidt reveals that Stith stated that when employees does things that their supervisors disagree with, the employee must be willing to pay the price. This suggests that AIP/PT management disagreed with Schmidt's activities and punished him by giving him a low performance evaluation. <b>S 001143-144.</b>						

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			30-Aug-99	Note from Schmidt to Benka in response to Benka requesting to know the names of the people with whom Schmidt discussed his performance review. Schmidt notes that the employees feel the only reason Benka would want to know their names would be to punish either Schmidt or them or both. <b>S 001148-153.</b>						
			17-Oct-97	Memo to PT Advisory Committee from unsigned authors (Jeff likely an author). The memo notes that Harris formally warned Schmidt about being "counterproductive." Schmidt considers this warning to be a gag order due to the broad meaning of counterproductive. The memo's theme is the repressive environment at PT. <b>S 001167-169.</b>						

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			23-Jan-01	Email from Brodsky to Prof. Dolan re AIP's decision to fire Schmidt. Prof. Dolan wrote an email protesting AIP's decision to fire Schmidt. Dolan believes that Schmidt was fired because he expressed concern about diversity. Brodsky responded that AIP fired Jeff for not only writing the book but for additional facts as well. <b>S 001232-233 and 001551-553.</b>						
			16-Mar-01	Schmidt's appeal of Region 5's dismissal of his unfair labor practice charge, drafted by Dickstein Shapiro Morin & Oshinsky. The appeal goes through Schmidt's claims and its history. The appeal was denied on June 29, 2001. Schmidt sought reconsideration on August 7, 2001 and it was rejected as untimely on August 14, 2001. <b>S 001554-582.</b>						
			21-Jun-00	Letter to Brodsky from former AIP employees protesting Schmidt's firing. <b>S 001599-600.</b>						

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			27-Apr-98	Letter by Schmidt to Braun requesting that his 1998 performance review be redone. Schmidt believes he received a low rating because of his activism. His request for a new review recounts his activism, work product, and management reaction. <b>S 002103-159.</b>						
			13-Mar-01	Email from Alex Hellemans to Schmidt. Hellemans was willing to talk to lawyers about PT's willingness to allow employees work on freelance materials during regular work hours. <i>This bolsters Schmidt's claim that he was treated differently -- potential problem is that Hellemans' freelance material may not have had a potentially negative effect on morale.</i> <b>S 002168-169.</b>						

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			16-Jun-00	Notes from interview of Schmidt by NLRB examiner Tasha Owens re the reason AIP fired him. AIP claims that Schmidt stated he worked on the book on company time and also that he asked for reduced hours so they concluded that he worked on the book during regular business hours. AIP however never asked Schmidt if he actually worked on the book during company hours. <b>S 002170-177.</b>						
			21-May-98	Dr. Schmidt was awarded with an award referred to as "Pat on the Back" and was awarded \$100. The cover page states, "Thanks for your extra effort." This disputes claims that Jeff was unwilling to do extra work. <b>S 000020-022</b>			13-Feb-95	1995 Performance Review. Schmidt's review notes that he has failed to meet his productivity goal. He only edited 11-12 articles and is capable of editing 16 in a calendar year. Schmidt arrives late, eats late and stays late. He is out of sync with the rest of the office. <b>D 00022-24.</b>		
			9-May-90	Letter from Ahmed Zewail of the California Institute of Technology to Gloria Lubkin noting that Jeff "is excellent and PT is lucky to have him." <b>S 000062</b>			31-Jan-94	Memo from Ken to Schmidt, cc: Lubkin and Rigden re late arrival. Ken notes that Jeff arrived at 10:35am but that AIP core hours are from 9 to 4. Everyone is expected to be in the office by 9. <b>D 00066.</b>		

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			19-Jul-89	Letter from Robert Birgeneau of MIT to Ms. Lupkin congratulating Jeff on a fine editing job. He added that Jeff " was a pleasure to work with and he made a number of excellent stylistic improvements." <b>S 000071.</b>			25-Jun-91	Memo from Rigden to Lubkin re Jeff Schmidt's vacation. Rigden writes to Lubkin to inform her that he has approved Schmidt's request for vacation for "both humane and legal reasons." <i>What legal reasons?</i> <b>D 00098.</b>		
			4-Aug-99	Email from Schmidt to I:stein@aip.acp.org re an appearance by Schmidt on C-SPAN critiquing an author of a book about IBM's decision to fire workers and the employees reaction. <b>S 000176.</b>			7-Dec-95	Email from Schmidt asking whether physicists are arrogant. Schmidt says the response is not for PY but for "his own enlightenment." Schmidt used his AIP email address and this topic could be discussed in his book. <b>D 00255.</b>		
			18-Mar-99	Email from Benka to PT re Gary Squires starting as Interim Publisher. Benka encourages everyone "to be open and honest with him." <b>S 000191.</b>			11-Mar-96	Letter from Benka to Brodsky discussing Schmidt's contact with the office that administers contracts and grants at Univ of Md. Schmidt was not acting on behalf of PT/AIP and this information could have been used in his book. Another instance of possible misuses of PT resources for his book. Jef failed to provide an adequate reason for seeking the information when requested. <b>D 00268269.</b>		

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			22-Nov-96	Email from Benka to PT editors re the search for a new editor. Benka made the resumes of all applicants available for review and comment. He states, "Let's get the best." <i>Did Jeff pick an applicant or two and advocate for those people in an effort to increase diversity? S 000497-498.</i>			20-Jun-96	Handwritten notes between Schmidt and Benka. Schmidt and Benka are discussing the amount of time Schmidt could carryover from the previous year. Schmidt believed a certain amount was approved but Benka merely requested that it be approved. The amount officially approved is less than requested by Schmidt and Benka. <b>D 00282 &amp; D00285.</b>		
			1-May-02	Report and letter from Dr. Wallace Manheimer and Prof. Victor Granatstein from the Human Rights Committee. The report finds it most likely that Jeff was fired for his activism and included statements from Bill Sweet and Jean Kumagai supporting Jeff's case. The report ends with a letter to Brodsky seeking a compromise between AIP and Schmidt. <b>S 000631-640.</b>			19-Aug-97	Memo from Benka to Schmidt explaining that part of Schmidt's duties as an article editor is to produce finished articles. Schmidt turned down articles to edit while out on paternity leave. Schmidt was out of the office and did not receive the memo until August 19, 1997. <b>D 00300 and 00405.</b>		

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			31-Aug-01	Statement by Brodsky in response to Schmidt and his supporters. He states that Schmidt was fired for either working on a freelance project while on company time or insinuated that he did, thus undercutting AIP's efforts to improve productivity. He quotes the NLRB and its finding that agree with AIP's position. <b>S 000794.</b>			13-Feb-97	Performance Review of Schmidt. The review notes that Schmidt's behavior is disruptive and divisive which is having a "very serious negative effect on morale." The review notes that Schmidt needs to put an end to his disruptive and divisive behavior. <b>D 00320-322</b>		
			14-Jan-02	Statement by a group of concerned physicists responding to Brodsky's statement re the reasons for firing Schmidt. The response undermines Schmidt's legal case by stating, "a private corporation in the United States has the legal right to fire an employee for writing a book it doesn't like." The physicists do not challenge AIP's legal right to fire Jeff, only that it violates the norms of the physics community. <b>S 000795-797.</b>			1-Dec-97	Email from Benka to Schmidt suggesting that Schmidt handle his own correspondence. Schmidt was apparently using Susan Funk, Assistant to the Editor, for correspondence. He was asked to stop. <b>D 00327-328.</b>		

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			15-Mar-01	Declaration of William Sweet. Sweet's declaration affirms that PT did not fire people for working on freelance articles nor were employees disciplined for doing so on "PT Time." <b>S 000862-863.</b>			1-Jun-98	Handwritten note from Benka noting that Schmidt had been the potential cause of a disturbance due to his comments with a fellow employee. Schmidt apparently took exception to the idea of editors doing their own keyboarding and noted that "there would be no end to the new demands placed on him. <b>D 00330.</b>		
			15-Mar-01	Declaration of Chris Mohr. Mohr affirms that PT's employees were permitted to work on outside/freelance articles. Mohr also declares that once he completed his PT duties, he was not assigned extra work to fill his time. <b>S 000886-887.</b>						

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			14-Jan-00	Email from Schmidt to Feder, Elliot and Kumagai discussing Schmidt's recent interview with new PT publisher Nanna. Schmidt's email details his discussion with Nanna and is potentially unhelpful because it shows Jeff as attempting to get a reaction for the sake of getting a reaction. It is possible the repeated incidents of this type could be a proper, non-illegal reason to fire Jeff. For example, his first line in the book could have been the final straw, true or not. <b>S. 001085-086.</b>			28-Jan-98	Notes from Benka detailing discussing with Schmidt and Feder following Benka discovering Schmidt and Feder in a closed door meeting. Benka felt entitled to know what the two were discussing, as it should be work related. <b>D 00331-332.</b>		

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							24-Mar-98	Benka notes from review with Schmidt. Schmidt feels that the review is inaccurate for many reasons and that it is punitive for his organizing efforts. Benka did not know about organizing efforts but felt that Schmidt had been disruptive and reprimanded for that behavior. Schmidt and Benka disagreed about his work quality and level. Schmidt refuses to do keyboarding and Benka refuses to allow Schmidt to do reporting. Benka believes that Schmidt does not have the best interest of PT or its readers in mind. <b>D 00358-361.</b>		
							12-Mar-98	Signed 1998 Performance Review of Schmidt. This review removes any mention of Schmidt's disruptive behavior. <b>D 00352-356.</b>		

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			19-Jan-00	Email from Elliot to Schmidt, Kumagai and Feder re recent conversation with Nanna about carrying over vacation. Another email between co-workers showing their disdain for management. These emails are potentially harmful in that they potentially show a lack of respect for upper management. If their actions mirror the words on paper, they all could have been grouped as trouble makers and morale problems. <b>S 001088089.</b>			11-Feb-98	Schmidt Performance Review. First, Schmidt fell short of PT's new standards -- his productivity slipped and his editing was at times poor. Additionally, Schmidt has devoted time to managerial matters that are not part of his job. Lastly, Schmidt is seen as spreading dissent with some and intimidating to others. This is causing a problem for management. <b>D 00334-345</b>		
							26-Mar-98	Email from Lubkin to Harris and Benka re Schmidt's work. Lubkin notes that Schmidt's selection is more partisan and far from representative of what PT carried. <b>D 00362.</b>		
							1-Apr-98	Notes from Benka re recent conversation with Schmidt. Benka removed Schmidt from the May issue because (1) poor editorial judgment, (2) no team effort, and (3) more work to have others fix Schmidt's work. <b>D 00381.</b>		

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							2-Apr-98	Email from Schmidt to various PT editors re his removal from working on an 8-page section. Schmidt suggests the inclusion of a quote which could be viewed as directly challenging the position to remove him from the section. <b>D 00382.</b>		
							24-Apr-98	Note written by Benka recalling Schmidt's words on Collins' farewell card. "To truth, whether the like it or not. Keep up the good work." More outward expression of dissatisfaction. <b>D 00384.</b>		
							5-May-98	Handwritten note by Benka noting Schmidt sent an unsolicited copy of his response to his performance review to Barbara and all the staff. Benka, Lubkin and Harris did not receive an advance copy. <b>D 00465.</b>		

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Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							June 11-15, 1998	Memo from Benka to Stith responding to Schmidt's memo about his performance review. Benka maintains that he knew nothing about Schmidt's "organizing efforts>' He was aware that Jeff had some influence over some of the staff. Benka maintains that he took steps in favor of affirmative action. Lastly, he notes that Jeff is less than helpful and not necessarily a constructive employee. <b>D 00473-476.</b>		
							16-Jul-98	Email from Schmidt to Barbara detailing the response Schmidt received to his performance review appeal. From other documents, this is an email and description that Barbara did not wish to receive or be a part of. <b>D 00481-482.</b>		
							27-Jul-98	Email from Benka to Schmidt noting that Schmidt needs to be more involved in the acquisition process of articles. <b>D 00483.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							14-Jun-99	Handwritten notes by Benka following a discussion with Schmidt after Schmidt returned from his sabbatical. Benka notes that he asked Schmidt to change his actions and that prior to his sabbatical Schmidt's actions were "decidedly not positive." <b>D 00492.</b>		
							29-Jul-99	Handwritten notes by Benka noting a conversation with Schmidt on June 18, 1999. He notes that Schmidt was resistant to editing 18 articles and that he told Schmidt that his decision to circulate his response to his review and his attempt to orchestrate a rebellion as the Advisory Committee Meeting in 1998 would likely be on his next review. <b>D 00493.</b>		
							29-Jun-03	Note from Schmidt to Benka asking to be on 2/3 time and thus be responsible for editing 12 articles. <b>D 00494.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							5-Aug-99	Email from Benka to Schmidt with handwritten notes from Benka. The handwritten notes indicate that Benka believes Schmidt is taking too long to edit articles and resists meeting deadlines created by Benka. <b>D 00495.</b>		
							13-Aug-99	1999 Performance Review. The review finds that Schmidt edited only 13.5 articles despite being asked to edit 18. Also notes that Schmidt is good at editing but is not very creative in re-writing and raising the level of other authors. The review also notes that Schmidt "repeatedly engaged in disruptive behavior." Two examples are provided. <b>D 00498-500.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							19-Aug-99	Handwritten notes by Benka following a meeting with Schmidt. Benka notes that Schmidt has already discussed his review and response with another AIP employee. Notes that he hoped 1998 and 1999 was the end of Schmidt's destructive behavior at AIP. Schmidt refers to the review process by Benka as a witch hunt and that other fear reprisals. <b>D 0507-514.</b>		
							30-Aug-99	Note by Schmidt to Benka describing the responses by Schmidt's co-workers to his review. Schmidt does not reveal names and says that others are concerned as to why Benka would want the names of employees Schmidt has discussed his review. <b>D 00515.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							18-Nov-99	Email from Stith to Benka re Schmidt's Vacation Carryover. Alice Gersh notes that AIP's policy for a Leave of Absence Without Pay requires an employee to take all vacation time before unpaid leave begins. She suggests paying Schmidt for the time he took off for his sabbatical and that would eliminate his excess leave time. Benka considers this but notes that Elliot has a similar request and that Schmidt may not go for AIP's suggestion. <b>D 00534-536.</b>		
							1-Nov-00	Notes for memo by Benka re Schmidt's vacation time. Benka states that Schmidt finds AIP's leave policy unfair but is unsympathetic. He realizes AIP made a mistake with re to Schmidt's sabbatical and notes that AIP's willingness to allow Elliot to carry over leave is problematic. <b>D 00545.</b>		
							3-Apr-00	Memo from Nanna to Schmidt re Vacation Request. Nanna's memo permits Schmidt to carryover extra vacation time. <b>D 00548.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							24-May-00	Fax from Benka to Braun with pages of Schmidt's book, Disciplined Minds attached. The first page of Schmidt's book states that he wrote the book on stolen time. Benka took this to mean that Schmidt wrote the book while working for AIP and during regular hours. <b>D 00554-563.</b>		
							September 2, 1998	Note to Schmidt noting that he must complete 8-9 more articles by January and adding that disrupting behaviors cannot be tolerated. It also adds that Schmidt made supportive statement/additions as a meeting. <b>D 00646.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							17-Jul-00	Email from Brodsky to Dan Kleppner discussing the rationale for firing Schmidt. Brodsky asks Kleppner to read the opening paragraph then notes that Schmidt had repeatedly resisted doing more work and consistently stated he did not have enough time to complete the work he had. Brodsky concluded that the two go together and that Schmidt was using company time to write a book and failing to meet his work requirements. Kleppner responds that he believes that AIP was justified in firing Schmidt. <b>D 00723-728.</b>		
							July-August 2001	Brodsky responds to emails requesting AIP's position for firing Schmidt. Brodsky notes that he is not permitted to get into details as to why Schmidt was fired. <b>D 00737-767.</b>		
							24-Aug-01	Email from Nathon Wiser to Brodsky stating the AIP and Brodsky should be congratulaed for firing Schmidt and the real wonder is why it took 19 years. <b>D 00768-769.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
							2-Feb-01	Letter from Melik to William Welch, Executive Director, Human Relation's Commission. The letter responds to various allegations raised by Schmidt, specifically, her letter indicates that Schmidt failed to meet his productivity goals. <b>D 01532-611</b>		
42 U.S.C. 1983	1. Infringement of a federally created right									
	2. state action or action under color of state law. Elements of State action:		19-Feb-00	Email from Schmidt to mwiley re Semiannual purge of Univ. of Md WAM Accounts. Jeff states he would like to avoid havng his email account purged thus allowing him to maintain a U. of Md email address. <b>S 000094.</b>						
			13-Oct-99	Email from Schmidt to mwiley@aip.org noting that he would like to maintain his Univ. of Md email account. <b>S 000163.</b>						
			22-Apr-04	Newspaper article (The Diamondback - U of Md Independent Student Newspaper) discussing Schmidt's dismissal. The article discusses academic freedom for university affiliates. <b>S 000620-621.</b>						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			~April 21, 2001	Letter from Schmidt and a group of professors at the Univ. of Maryland protesting PT's decision to fire Schmidt and his subsequent loss of university privileges. The letter indicates the the university subsidized PT/AIP. <b>S 000622-624.</b>						
			3-Feb-04	Letter from Joseph Auslander (Professor Emeritus, Dep't of Mathematics) and Mark Leone (Professor, Dep't of Anthropology) to the Senate Executive Committee requesting the Committee to review PT's dismissal of Schmidt. The request notes that PT/AIP is a university affiliate. <b>S 000625-626.</b>						
			17-Jul-01	Letter from Jack Roach, Executive Assistant to the President of the Univ of Md, to Schmidt re Schmidt request for the affiliation agreement between the university and AIP. Roach's letter containss the final draft but he could not locate the signed final copy. <b>S 000912-915 and 001023-026.</b>						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
	B. When heavy regulation of private actor exists, there must be sufficiently close nexus between state and challenged action of the regulated entity so that action of the latter may be fairly treated as that of the state itself									
	C. public function area, there can be state action <i>if private group is covering</i>									
42 U.S.C. 2000e	Plaintiff acted to protect Title VII employment discrimination rights		11-Nov-00	Notice of Charge of Discrimination sent to Braun by James Lee, Director of the Equal Employment Opportunity Commission. The notice states that Schmidt claims a violation of Title due to retaliation for complaining about the treatment of minorities. <b>S 000641-645 and S 001405408.</b>						
			3-Oct-00	Timeline of events created by Schmidt detailing the acts taken by him and AIP. <b>S. 000649-666 and S 001413-1429.</b>						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			26-Jun-00	Notes taken by Schmidt following the examination by the unemployment office examiner, Dep't of Labor. Schmidt's notes indicate that he was awarded full unemployment benefits and that AIP did not seek to appeal this ruling. <b>S 000667-670 and 001430-433.</b>						
			13-Jun-02	Letter of Determination by the Prince George's County Government, Human Relations Commission. The Commission interviewed witnesses who confirmed that Schmidt had raised affirmative action issues with management. The Commission found that Schmidt had participated in protected activity. The Commission further found that adverse action was taken against Schmidt around the same time as his participation in protected activity but found no causal connection between Schmidt's activity and management's adverse actions towards him. <b>S 000720-729 and 001438-447.</b>						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
Adverse employment action was taken against employee			16-Jul-02	Letter for Re-Determination from Schmidt's attorney to Human Relations Commission. The letter argues that the commission erred in failing to find a causal connection between Schmidt's participation in protected activity and AIP's adverse action toward him. <b>S 000731-750 and 001348-1367.</b>						
			28-Apr-98	Email from Kumagai to Benka, et al re applicants for the editor positions. Kumagai suggests that PT "take affirmative action" and send the ad to women and minority physics' groups. <i>Not from Jeff but AIP may have assumed Kumagai and Schmidt worked hand in hand. S 000981.</i>						
			4-Feb-98	Letter from Schmidt to Graham Collins discussing various measures taken by AIP/PT to punish Schmidt for his activities, including the "gag order." <b>S 000752-755, 000788 791,</b>			Around July 22, 2002	Commission Order from Prince George's County Human Relations Commission agreeing to re-opening Schmidt's complaint for unlawful termination. <b>D 01468.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			19-Aug-99	Email from Benka to Schmidt re Jeff's response to his review. Benka criticizes Schmidt for circulating his review and would like to know the names of the staff members that have reviewed or discussed with Schmidt his review. <b>S 000767-783.</b>			13-Jul-04	Notice of Suit Rights sent by Marie M. Tomasso from the U.S. Equal Employment Opportunity Commission stating that Schmidt has 90 days to file suit. <b>D 01663-664.</b>		
			9-May-02	Email from Sweet to the Human Relations Commission clarifying certain aspects of his interview with the Commission. Sweet notes that he was allowed to work on freelance work so long as he completed his PT work. He says he was never reprimanded or warned about doing freelance work and that AIP was well aware of his outside work. <b>S 000784-785.</b>						
			15-May-02	Email from Chris Mohr to the Human Relations Commission clarifying certain aspects of his earlier interview with the Commission. Mohr indicates that he did freelance work while at PT and that AIP encouraged such activity. He was never warned or reprimanded for doing such work. <b>S 000786.</b>						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			11-Dec-00	Letter from Schmidt to Tom McCarthy of the NLRD. Schmidt's letter details the events leading up to his dismissal from AIP including his activism and subsequent firing. <b>S 001548-549.</b>						
			9-May-02	Email from Sweet to the Human Relations Commission clarifying certain aspects of his interview with the Commission. Sweet notes that he was allowed to work on freelance work so long as he completed his PT work. He says he was never reprimanded or warned about doing freelance work and that AIP was well aware of his outside work. <b>S 000784-785.</b>			13-Jun-02	Determination by Prince George's County Human Relations Commission. The determination lays out all of Schmidt's allegations and AIP's responses. The commission found insufficient evidence to support Schmidt's allegations. <b>D 01471-480.</b>		

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			15-May-02	Email from Chris Mohr to the Human Relations Commission clarifying certain aspects of his earlier interview with the Commission. Mohr indicates that he did freelance work while at PT and that AIP encouraged such activity. He was never warned or reprimanded for doing such work. S 000786.			11-Apr-03	Information provided by Wendy Mellk to Patricia Miller, Special Investigator, Human Relations Commission. Mellk provided the last 3 performance evaluations of Elliott, Kumagai, Sweet and Collins. Additionally, Mellk notes that PT has 21 employees of whom 4 are African-Americans. The performance reviews of Elliott, Kumagai, Sweet and Collins do not contain any of the statements similar to the complaints raised against Schmidt <b>D 01481-531.</b>		
			24-Oct-97	Email from Graham Collins to Schmidt, et al. Collins notes that Benka came to Collins' office and stated that it was "inappropriate to criticize Harris or Benka at staff meetings. Collins also references the gag order placed on Schmidt. S 001031.						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			31-Oct-97	Email from Graham Collins to Schmidt, et al. Collins discusses the gag order placed on himself and Schmidt. Collins also notes that the group (Schmidt, Collins, and Jean) have been having long meeting during work hours to discuss problems at AIP. <b>S 001032.</b>						
			2-Nov-97	Email from Paul Elliot to Schmidt, et al discussing Schmidt gag order and current dealings with Benka and Harris. The email also discusses the group's memo to the advisory board. <b>S 001033-034.</b>						
			14-Jan-02	Letter of Protest sent to Brodsky and signed by numerous physicists. The letter of protest is not effective because it does not say that Schmidt was fired for arguing in favor of minorities but instead protests his firing as being based on writing a critical book. If Schmidt was fired for the contents of the book, it creates problems for our claims. <b>S 001448-514.</b>						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			14-Jan-02	Press release announcing that numerous physicists along with Noam Chomsky are protesting Schmidt's firing. <b>S 001515-517.</b>						
			26-Sep-97	Letter from Harris and Benka to Schmidt noting that his comments and behavior at the retreat were counterproductive and would not be tolerated. Schmidt attempted to raise the issue of diversity but was told to sit down. Schmidt labels this the "gag order." <b>S 001518.</b>						
			24-Oct-97	Email from Collins to PT/AIP employees noting that he has been instructed by Harris and Benka not to criticise them in public. Collins notes that this is a broad order and thus he will be fairly quiet at meetings. <b>S 001519.</b>						
			2-Dec-97	Email from Harris and Benka to Schmidt rescinding the "gag order." All parties are governed by a code of behavior. <b>S 001523.</b>						

Claims			Schmidt's Evidence				AIP's Evidence			
Claim	Elements	Defenses	Date	Documentary evidence	Date	Testimonial evidence	Date	Documentary evidence	Date	Testimonial evidence
			4-Jan-01	Schmidt's First Amended Title VII Charge against AIP. Schmidt charges that his dismissal for writing a book was a pretext. He claims to have been fired for his activism in favor of diversity. <b>S 001550.</b>						
		Burden shifts to defendant to prove legitimate, non-discriminatory reasons for its action	19-Aug-99	Email from Benka to Schmidt responding to Schmidt's request for a review of his performance evaluation. Benka notes that he did Schmidt a favor by counting 1 long article as 2 to allow Schmidt to meet his goal and receive an acceptable rating. <b>S 001529.</b>						